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July 1, 2011

Via Hand Delivery

Cynthia P. Morrison, Clerk
Portsmouth Circuit Court
Civil Division
601 Crawford Parkway
Portsmouth, VA 23705

**Re: Estate of Kirill Denyakin v. Stephen D. Rankin, Individually and in
His Official Capacity As a Police Officer for the City of Portsmouth**

Dear Ms. Morrison:

Enclosed please find the following:

1. Plaintiff's original Complaint and Civil Cover Sheet for filing with the Court along with a check in the amount of **\$347.00** for the filing fee.
2. Two (2) copies of the Complaint, one (1) of which I ask that you prepare for service by private process server to be served on the defendant, **Stephen D. Rankin**; and the remaining copy returned to the undersigned after it has been filed and stamped.

Lastly, please contact my paralegal, Michelle, when the papers for service are ready for pickup.

Thanking you for your cooperation and courtesy, I remain

Very truly yours,

BENNETT and ZYDRON, P.C.

By: C. Stewart Gill
C. Stewart Gill, Jr.

CSG,JR:ms

Enclosures

cc: John D. Hooker, Jr., Esquire (w/enc.)
Jerrell R. Johnson, Esquire (w/enc.)
G. Timothy Oksman, Esquire (w/enc.)
Alan B. Rashkind, Esquire (w/enc.)
James E. Brydges, Jr., Esquire (w/enc.)
Peppy's Service on Summons

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. _____
(CLERK'S OFFICE USE ONLY)*

PORTSMOUTH

Circuit Court

Jerrell R. Johnson, Administrator of the

v./In re: Stephen D. Rankin, Indiv. and in His Official

PLAINTIFF(S)

DEFENDANT(S)

Estate of Kirill Denyakin, Deceased

Capacity As A Police Officer for the City of Portsmouth

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- | | | |
|---|--|--|
| <input type="checkbox"/> Accounting | <input type="checkbox"/> Confessed Judgment | <input type="checkbox"/> Judicial Review |
| <input type="checkbox"/> Administrative Appeal | <input type="checkbox"/> Conservator of Peace | <input type="checkbox"/> Landlord/Tenant |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Construe Will | <input type="checkbox"/> Law Enforcement Petition |
| <input type="checkbox"/> Adoption - Foreign | <input type="checkbox"/> Contract Action | <input type="checkbox"/> Mechanics Lien |
| <input type="checkbox"/> Adult Protection | <input type="checkbox"/> Contract Specific Performance | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Aid and Guidance | <input type="checkbox"/> Correct/Erroneous State/Local Taxes | <input type="checkbox"/> Motor Vehicle Tort |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Counterclaim - Monetary Damages | <input type="checkbox"/> Name Change |
| <input type="checkbox"/> Annulment | <input type="checkbox"/> Counterclaim - No Monetary Damages | <input type="checkbox"/> Order to Sever |
| <input type="checkbox"/> Annulment - Counterclaim/Responsive Pleading | <input type="checkbox"/> Cross Claim | <input type="checkbox"/> Partition |
| <input type="checkbox"/> Appeal Decision of ABC Board | <input type="checkbox"/> Custody/Visitation/Support/Equitable Distribution | <input type="checkbox"/> Petition |
| <input type="checkbox"/> Appeal Decision of Board of Zoning | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Product Liability |
| <input type="checkbox"/> Appeal Decision of Comp Board | <input type="checkbox"/> Declare Death | <input type="checkbox"/> Quiet Title |
| <input type="checkbox"/> Appeal Decision of Employment Commission | <input type="checkbox"/> Delinquent Taxes | <input type="checkbox"/> Referendum Elections |
| <input type="checkbox"/> Appeal Decision of Local Government | <input type="checkbox"/> Detinue | <input type="checkbox"/> Reformation of Trust |
| <input type="checkbox"/> Appeal Decision of Marine Resources Commission | <input type="checkbox"/> Divorce | <input type="checkbox"/> Reinstatement of Driving Privileges |
| <input type="checkbox"/> Appeal Decision of Voter Registration | <input type="checkbox"/> Divorce - Counterclaim/Responsive Pleading | <input type="checkbox"/> Reinstatement (General) |
| <input type="checkbox"/> Appointment of Church Trustee, Substitute Fiduciaries | <input type="checkbox"/> Ejectment | <input type="checkbox"/> Removal |
| <input type="checkbox"/> Approval of Right to be Eligible to Vote | <input type="checkbox"/> Encumber/Sell Real Estate | <input type="checkbox"/> Separate Maintenance |
| <input type="checkbox"/> Asbestos Litigation | <input type="checkbox"/> Enforce Vendor's Lien | <input type="checkbox"/> Separate Maintenance - Counterclaim/Responsive Pleading |
| <input type="checkbox"/> Attachment | <input type="checkbox"/> Escheat | <input type="checkbox"/> Standby Guardian/Conservator |
| <input type="checkbox"/> Bond Forfeiture Appeal | <input type="checkbox"/> Establish Boundaries | <input type="checkbox"/> Termination of Mineral Rights |
| <input type="checkbox"/> Child Abuse and Neglect - Unfounded Complaint | <input type="checkbox"/> Expunge | <input type="checkbox"/> Unlawful Detainer |
| <input type="checkbox"/> Civil Contempt | <input type="checkbox"/> Forfeiture of U.S. Currency | <input type="checkbox"/> Vehicle Confiscation |
| <input type="checkbox"/> Claim Impleading Third Party Defendant - Monetary Damages | <input type="checkbox"/> Freedom of Information | <input type="checkbox"/> Will Contested |
| <input type="checkbox"/> Claim Impleading Third Party Defendant - No Monetary Damages | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Writ of Certiorari |
| <input type="checkbox"/> Complaint - (Miscellaneous) | <input type="checkbox"/> General Tort Liability (other than motor vehicle) | <input type="checkbox"/> Writ of Habeas Corpus |
| <input type="checkbox"/> Compromise Settlement | <input type="checkbox"/> Grievance Procedures | <input type="checkbox"/> Writ of Mandamus |
| <input type="checkbox"/> Condemnation | <input type="checkbox"/> Guardian/Conservator Appointment | <input type="checkbox"/> Writ of Prohibition |
| | <input type="checkbox"/> Impress/Declare a Trust | <input type="checkbox"/> Writ of Quo Warranto |
| | <input type="checkbox"/> Injunction | <input checked="" type="checkbox"/> Wrongful Death |
| | <input type="checkbox"/> Interdiction | <input type="checkbox"/> Other |
| | <input type="checkbox"/> Interrogatory | |
| | <input type="checkbox"/> Intentional Tort | |
| | <input type="checkbox"/> Judgment Lien-Bill to Enforce | |

☒ Damages in the amount of \$ 22,000,000.00 are claimed.

July 1, 2011

DATE

☐ PLAINTIFF

☐ DEFENDANT

☒ ATTORNEY FOR ☐ PLAINTIFF
☐ DEFENDANT

C. Stewart Gill, Jr., Esquire

BENNETT and ZYDRON, P.C.

&

John D. Hooker, Jr., Esquire

PRINT NAME

120 S. Lynnhaven Rd., Ste.100, Virginia Beach, VA 23452

1206 Laskin Rd., Ste.110, Virginia Beach, VA 23451

ADDRESS /TELEPHONE NUMBER OF SIGNATOR

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

**JERRELL R. JOHNSON,
ADMINISTRATOR of the ESTATE
of KIRILL DENYAKIN, DECEASED**

Plaintiff,

v.

**CASE NO.: _____
PLAINTIFF DEMANDS TRIAL BY JURY**

**STEPHEN D. RANKIN, Individually
and in His Official Capacity As a Police
Officer for the City of Portsmouth, Virginia,**

Defendant.

**SERVE: Stephen D. Rankin
Portsmouth Police Department
711 Crawford Street
Portsmouth, Virginia 23704**

COMPLAINT

COMES NOW the Plaintiff, Jerrell R. Johnson, Administrator of the Estate of Kirill Denyakin, deceased, by counsel, and files this as his Complaint against the Defendant, Stephen D. Rankin, individually and in his official capacity as a police officer for the City of Portsmouth, Virginia, for damages in the sum of TWENTY-TWO MILLION DOLLARS, (\$22,000,000.00), of which FIFTEEN MILLION DOLLARS (\$15,000,000.00) represents compensatory damages and SEVEN MILLION DOLLARS (\$7,000,000.00) represents punitive damages; together with the cost of this action and prejudgment interest from April 23, 2011, for the following, to-wit:

1. On July 1, 2011, the plaintiff, Jerrell R. Johnson, a discreet and competent attorney at law, qualified as Administrator of the Estate of Kirill Denyakin (hereinafter "Plaintiff" or "Denyakin"), who died on or about April 23, 2011, in the Circuit Court of the City of Portsmouth.

A copy of the certificate of qualification is attached hereto as Exhibit 1.

2. At all times material herein, Defendant Stephen D. Rankin (hereinafter "Defendant" or "Officer Rankin") was employed as a police officer with the Police Department of the City of Portsmouth, Virginia, and was acting within the course and scope of his employment.

3. At all times material herein, plaintiff was living in apartment #2C, which was located at 454 Green Street, Portsmouth, Virginia. The main entrance to the apartment building consists of a glass door and atrium, which is generally located on the south side of the building and is surrounded by a paved courtyard. See two (2) photographs attached collectively as Exhibit 2.

4. On April 23, 2011, Denyakin had become severely intoxicated and became locked out of his apartment at 454 Green Street. Due to his level of intoxication, Denyakin displayed difficulty walking and he was unsteady on his feet.

5. Shortly after 10:00 p.m. on April 23, 2011, Denyakin was attempting to get back into his apartment building. An unidentified neighbor heard Denyakin banging on the glass door atrium entrance at 454 Green Street, trying to get back inside the building. The neighbor then called 911 to report the incident to the Police Department of the City of Portsmouth.

6. Officer Rankin received the dispatch from the Portsmouth Police Department's Communication's Center about the incident and responded to 454 Green Street to investigate the incident.

7. Upon arriving at the scene, Officer Rankin observed Denyakin banging on the glass door entrance and attempting to gain entry to the apartment building. Officer Rankin failed to make any reasonable inquiry as to why Denyakin was attempting to gain entry into the apartment building; and further failed to make any reasonable inquiry into Denyakin's mental and/or physical condition,

despite the fact that Denyakin was obviously intoxicated. Instead, Officer Rankin gave Denyakin verbal commands, causing Denyakin to turn around.

8. At all times material herein, Denyakin was completely unarmed. Moreover, at no time did Denyakin display any object similar in appearance to a firearm or any other weapon; and at no time did Denyakin make any threatening movements towards Officer Rankin or any other person. Under the totality of the circumstances, no objectively reasonable police officer could have believed that Denyakin posed a threat of serious physical harm either to Officer Rankin or to any other person.

9. Without any reasonable suspicion, probable cause, or legal justification, and in violation of Denyakin's statutory and constitutional rights under the United States Constitution, the Constitution of Virginia, and state and federal statutes, Officer Rankin maliciously and violently shot Denyakin multiple times with his service weapon. Forensic evidence indicates that Officer Rankin fired his service weapon at Denyakin 15 times and that 11 of those bullets struck Denyakin.

10. Following the shooting, emergency medical services personnel pronounced Denyakin dead at the scene.

COUNT I-PURSUANT TO 42 U.S.C. § 1983
EXCESSIVE FORCE

11. Paragraphs 1-10, as set forth above, are re-alleged and incorporated herein by reference.

12. Count I is brought against Officer Rankin in his individual capacity and in his official capacity as a police officer of Police Department of the City of Portsmouth, Virginia.

13. The Fourth Amendment to the United States Constitution provides, in pertinent part,

that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” The Fourth Amendment thus requires that the amount of force used to effect an investigatory stop, arrest, or other seizure of a person must be reasonable under the circumstances. See Graham v. Connor, 490 U.S. 386 (1989).

14. The aforementioned willful, wanton, negligent, reckless, malicious, brutal, and violent conduct of Officer Rankin, including his use of deadly and unreasonable force to subdue Denyakin and to take him into custody, constituted an unreasonable seizure of Denyakin’s person, and an excessive use of force under the totality of the circumstances.

15. At all times material herein, Officer Rankin was acting under color of state law, to-wit: the laws of the Commonwealth of Virginia.

16. As a direct and a proximate result of the aforesaid conduct, Denyakin was deprived of his civil rights as guaranteed under the United States Constitution, and state and federal statutes; and the plaintiff died on April 23, 2011.

17. As a further direct and proximate result of the conduct of Officer Rankin as aforesaid, the plaintiff claims additional damages for medical expenses; reasonable funeral expenses; sorrow, mental anguish, and solace, including loss of society, companionship, comfort, guidance, kindly offices and advice from plaintiff; compensation for reasonably expected loss of income of decedent; and such other damages as set forth pursuant to Virginia Code § 8.01-52.

18. Denyakin is survived by the following heirs and/or statutory beneficiaries:

- (a) Yelena Denyakina, mother;
- (b) Ivan Denyakin, father; and
- (c) Roman Denyakin, brother.

COUNT II-PURSUANT TO 42 U.S.C. § 1983
CRUEL AND UNUSUAL PUNISHMENT

19. Paragraphs 1-18, as set forth above, are re-alleged and incorporated herein by reference.

20. Count II is brought against Officer Rankin in his individual capacity and in his official capacity as a police officer of Police Department of the City of Portsmouth, Virginia.

21. The Eighth Amendment to the United States Constitution provides, in pertinent part, protection of individuals from the infliction of "cruel and unusual punishments." The Eighth Amendment thus requires that law enforcement officers must use force in a good-faith effort to maintain or restore discipline, rather than maliciously and sadistically to cause harm. See Hudson v. McMillian, 503 U.S. 1 (1992).

22. Officers Rankin's malicious, violent, brutal, sadistic, and abusive use of deadly force against Denyakin constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

23. At all times material herein, Officer Rankin was acting under color of state law, to-wit: the laws of the Commonwealth of Virginia.

24. As a direct and a proximate result of the aforesaid conduct, Denyakin was deprived of his civil rights as guaranteed under the United States Constitution, and state and federal statutes; and Denyakin died on April 23, 2011.

25. As a further direct and proximate result of the conduct of Officer Rankin as aforesaid, the plaintiff claims additional damages for medical expenses; reasonable funeral expenses; sorrow, mental anguish, and solace, including loss of society, companionship, comfort, guidance, kindly

offices and advice from plaintiff; compensation for reasonably expected loss of income of decedent; and such other damages as set forth pursuant to Virginia Code § 8.01-52.

26. Denyakin is survived by the following heirs and/or statutory beneficiaries:

- (a) Yelena Denyakina, mother;
- (b) Ivan Denyakin, father; and
- (c) Roman Denyakin, brother.

COUNT III
GROSS NEGLIGENCE

27. Paragraphs 1-26, as set forth above, are re-alleged and incorporated herein by reference.

28. At the said time and place, it was the duty of Officer Rankin to exercise his duties as a sworn police officer of the Police Department of the City of Portsmouth, Virginia with reasonable care and due regard for persons within the community, including Denyakin.

29. Without limitation, Officer Rankin breached said duty in the following particulars:

- a. Failed to question plaintiff and to make reasonable inquiry into plaintiff's representations to him that he was a resident of the apartment building at 454 Green Street, Portsmouth, Virginia;
- b. Failed to question plaintiff and to make reasonable inquiry into plaintiff's physical and mental condition, including the fact that plaintiff was displaying visible and obvious signs of distress and severe intoxication;
- c. Failed to exhaust all other reasonable alternatives before using deadly force on plaintiff, including but not limited to professional presence/identification, verbalization, soft control techniques, intermediate techniques, hard control techniques, and/or less lethal force;
- d. Failed to use only that level of force necessary to successfully accomplish legitimate police functions and/or objectives and which was commensurate with the level of threat presented;

- e. Failed to use a reasonable type and degree of force based upon the facts of the situation and which was commensurate with the level of threat presented; and
- f. Breached his duty to plaintiff in such other respects that will become known through the course of discovery.

30. The aforesaid conduct and acts of Officer Rankin demonstrated such an indifference to Denyakin as to constitute an utter disregard of caution or prudence, amounting to a complete neglect of the safety of Denyakin. Defendant's negligence, as described herein, is conduct that would shock the conscience of fair-minded people.

31. As a direct and a proximate result of the aforesaid conduct, Denyakin died on April 23, 2011.

32. As a further direct and proximate result of the conduct of Officer Rankin as aforesaid, the plaintiff claims additional damages for medical expenses; reasonable funeral expenses; sorrow, mental anguish, and solace, including loss of society, companionship, comfort, guidance, kindly offices and advice from Denyakin; compensation for reasonably expected loss of income of decedent; and such other damages as set forth pursuant to Virginia Code § 8.01-52.

33. Denyakin is survived by the following heirs and/or statutory beneficiaries:

- (a) Yelena Denyakina, mother;
- (b) Ivan Denyakin, father; and
- (c) Roman Denyakin, brother.

COUNT IV
ASSAULT AND BATTERY

34. Paragraphs 1-33, as set forth above, are re-alleged and incorporated herein by reference.

35. In the course of shooting and killing Denyakin on April 23, 2011, Officer Rankin committed an assault and battery against Denyakin, i.e., by physically touching him person in a rude, angry, and offensive manner, against his will, and/or by placing plaintiff in reasonable fear that he may receive further imminent bodily harm and/or injury.

36. Said conduct on the part of Officer Rankin against Denyakin was unprovoked and committed without legal justification or excuse.

37. As a direct and a proximate result of the aforesaid conduct, Denyakin died on April 23, 2011.

38. As a further direct and proximate result of the conduct of Officer Rankin as aforesaid, the plaintiff claims additional damages for medical expenses; reasonable funeral expenses; sorrow, mental anguish, and solace, including loss of society, companionship, comfort, guidance, kindly offices and advice from Denyakin; compensation for reasonably expected loss of income of decedent; and such other damages as set forth pursuant to Virginia Code § 8.01-52.

39. Denyakin is survived by the following heirs and/or statutory beneficiaries:

- (a) Yelena Denyakina, mother;
- (b) Ivan Denyakin, father; and
- (c) Roman Denyakin, brother.

COUNT V
PUNITIVE DAMAGES

40. Paragraphs 1-39, as set forth above, are re-alleged and incorporated herein by reference.

41. The acts of Officer Rankin which directly and/or proximately caused Denyakin's

death, including but not limited to the application of deadly force to seize Denyakin, constituted acts and omissions which under the circumstances amounted to a willful, wanton, reckless, malicious, brutal, and violent disregard of the rights and safety of Plaintiff, and for which an award of punitive damages is warranted.

42. As a direct and a proximate result of the aforesaid conduct, Denyakin was deprived of his civil rights as guaranteed under the United States Constitution, and state and federal statutes; and Denyakin died on April 23, 2011.

43. As a further direct and proximate result of the conduct of Officer Rankin as aforesaid, the plaintiff claims an award of punitive damages pursuant to Virginia Code § 8.01-52.

44. Denyakin is survived by the following heirs and/or statutory beneficiaries:

- (a) Yelena Denyakina, mother;
- (b) Ivan Denyakin, father; and
- (c) Roman Denyakin, brother.

WHEREFORE, the Plaintiff, Jerrell R. Johnson, Administrator of the Estate of Kirill Denyakin, deceased, by counsel, demands judgment against the Defendant, Stephen D. Rankin, individually and in his official capacity as a police officer for the City of Portsmouth, Virginia, for damages in the sum of TWENTY-TWO MILLION DOLLARS, (\$22,000,000.00), of which FIFTEEN MILLION DOLLARS (\$15,000,000.00) represents compensatory damages and SEVEN MILLION DOLLARS (\$7,000,000.00) represents punitive damages; together with the cost of this action and prejudgment interest from April 23, 2011, **AND THE PLAINTIFF HEREBY DEMANDS TRIAL BY JURY.**

JERRELL R. JOHNSON, ADMINISTRATOR
of the ESTATE of KIRILL DENYAKIN,
DECEASED

By: C. Stewart Gill
Of Counsel

Carlton F. Bennett, Esquire (VSB#:18453)
C. Stewart Gill, Jr., Esquire (VSB#: 42789)
Christopher L. Daughtry, Esquire (VSB#: 80280)
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EXHIBIT

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